

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt new Chapter 32, “Plumbing and Mechanical Systems Board—Licensee Discipline,” Iowa Administrative Code.

The rules in Chapter 32 describe the Iowa Plumbing and Mechanical Systems Board’s grounds and method for discipline. The chapter also identifies civil penalties, unlawful practices, investigations, subpoenas, requests for hearings, factors the Board may consider, enforcement options and judicial review.

Consideration will be given to all written suggestions or comments on the proposed rules on or before December 22, 2009. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

Also, there will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Public Library  
529 Pierce Street  
Sioux City

Public Library  
400 Willow Avenue  
Council Bluffs

Public Library, Meeting Room C  
415 Commercial Street  
Waterloo

Ottumwa Regional Health Center  
1001 E. Pennsylvania  
Ottumwa

Public Library Information Ctr., Kelson Rm.  
2950 Learning Campus Drive  
Bettendorf

Hoover State Office Building, First Floor  
1305 East Walnut  
Des Moines

Iowa Western Community College – 2  
923 East Washington  
Clarinda

Mason City National Guard Armory  
1160 19th Street SW  
Mason City

Crestwood High School  
1000 4th Avenue East  
Cresco

Archdiocesan Pastoral Center  
1229 Mount Loretta  
Dubuque

Spirit Lake High School  
2701 Hill Avenue  
Spirit Lake

Prairie Lakes Area Education Agency  
1 Triton Circle, Library Bldg.  
Fort Dodge

Kirkwood Community College  
Room 117  
1816 Lower Muscatine Road  
Iowa City

Burlington High School  
421 Terrace Drive  
Burlington

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

These rules are intended to implement Iowa Code chapter 105.

The following amendment is proposed.

Adopt the following new 641—Chapter 32:

## CHAPTER 32

### PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSEE DISCIPLINE

**641—32.1(105,272C) Definitions.** For purposes of this chapter, the following definitions apply:

*“Board”* means the plumbing and mechanical systems board as established pursuant to Iowa Code section 105.3.

*“Discipline”* means any sanction the board may impose upon licensees.

*“Licensee”* means any person licensed to practice pursuant to Iowa Code chapter 105.

**641—32.2(105,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 641—32.3(105,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

**32.2(1)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

*a.* False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

*b.* Attempting to file or filing with the board or the department of public health any false or forged diploma, certificate, affidavit, identification or qualification in making an application for a license in this state.

**32.2(2)** Professional incompetence. Professional incompetence includes, but is not limited to:

*a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of the applicable licensed trade.

*b.* A substantial deviation from the standards of learning or skill ordinarily possessed and applied by others licensed in the applicable trade in the state of Iowa acting in the same or similar circumstances.

*c.* A failure to exercise the degree of care which is ordinarily exercised by the average licensee in the applicable trade acting in the same or similar circumstances.

*d.* Failure to conform to the minimal standard of acceptable and prevailing practice of a licensee in the applicable trade in this state.

*e.* Inability to practice in the trade with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

*f.* Being adjudged mentally incompetent by a court of competent jurisdiction.

**32.2(3)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

**32.2(4)** Habitual intoxication or addiction to the use of drugs.

**32.2(5)** Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee’s ability to practice within the profession. A copy of the record or conviction or plea of guilty shall be conclusive evidence of such conviction.

**32.2(6)** Fraud in representations as to skill or ability.

**32.2(7)** Use of untruthful or improbable statements in advertisements.

**32.2(8)** Willful or repeated violations of Iowa Code chapter 105 or 272C.

**32.2(9)** Violation of a board rule.

**32.2(10)** Nonpayment of a state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D and 641—Chapter 194.

**32.2(11)** Permitting another person to use the licensee's wall certificate, wallet card, or license number for any purpose.

**32.2(12)** Failure to cooperate with a board audit.

**32.2(13)** Failure to meet the continuing education requirements for licensure.

**32.2(14)** Submission of a false report of continuing education.

**32.2(15)** Failure to pay any outstanding fees or costs owed to the board.

**32.2(16)** Acceptance of any fee by fraud or misrepresentation.

**32.2(17)** Negligence by the licensee in the practice of the trade. Negligence by the licensee in the practice of the trade includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice, or conditions which impair the ability to safely and skillfully practice the trade.

**32.2(18)** Violation of a law, ordinance, or regulation of this state, or a political subdivision therein, another state, or the United States, which relates to the practice of the profession.

**32.2(19)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**32.2(20)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice in the trade in another state, district, territory, or country.

**32.2(21)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**32.2(22)** Failure to notify the board within 30 days after the occurrence of any judgment or settlement of professional negligence claim or action.

**32.2(23)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**32.2(24)** Failure to comply with a subpoena issued by the board or otherwise fail to cooperate with an investigation of the board.

**32.2(25)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**32.2(26)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**32.2(27)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice a trade included in Iowa Code chapter 105.

**32.2(28)** Failure to report a change in name or address within 30 days after it occurs.

**32.2(29)** Representing oneself as a licensed tradesperson when one's license has been suspended or revoked or when the license is on inactive status.

**32.2(30)** Permitting another person to use the licensee's license for any purpose.

**32.2(31)** Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

**32.2(32)** Failure to apply and obtain a permit prior to performing work, if required by the state or a political subdivision therein.

**32.2(33)** Failure to pay all inspection fees, if required by the state or a political subdivision therein.

**32.2(34)** Failure to pay a permit fee, if required by the state or a political subdivision therein.

**641—32.3(105,272C) Method of discipline.** The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.

3. Prohibit permanently, until further order of the board or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$5000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

**641—32.4(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

**641—32.5(105) Civil penalties.** The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 105.27(1). In addition to the procedures set forth in Iowa Code chapter 105, this chapter shall apply.

**32.5(1) Unlawful practices.** Practices by an unlicensed person which are subject to civil penalties include, but are not limited to:

- a. Acts or practices by unlicensed persons which require licensure to install or repair plumbing, HVAC, refrigeration, or hydronic systems under Iowa Code chapter 105.
- b. Acts or practices by unlicensed persons which require certification to install or repair medical gas piping systems under Iowa Code chapter 105.
- c. Engaging in the business of designing, installing, or repairing plumbing, HVAC, refrigeration, or hydronic systems without employing a licensed master.
- d. Use or attempted use of a licensee's certificate or wallet card or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.
- e. Falsely impersonating a person licensed under Iowa Code chapter 105.
- f. Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
- g. Other violations of Iowa Code chapter 105.
- h. Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

**32.5(2) Investigations.** The board is authorized by Iowa Code subsection 17A.13(1) and Iowa Code chapter 105 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

**32.5(3) Subpoenas.** Pursuant to Iowa Code section 17A.13(1) and Iowa Code chapter 105, the board is authorized in connection with an investigation of an unlicensed person to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to

initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in rule 641—34.5(105).

**32.5(4) *Notice of intent to impose civil penalties.*** The notice of the board's intent to issue an order to require compliance with Iowa Code chapter 105 and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice shall include the following:

- a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b. Reference to the particular sections of the statutes and rules involved.
- c. A short, plain statement of the alleged unlawful practices.
- d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 105.
- e. Notice of the nonlicensee's right to a hearing and the time frame in which the hearing must be requested.
- f. The address to which written request for hearing must be made.

**32.5(5) *Requests for hearings.***

a. Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

b. If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 105, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

c. If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

d. A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 105 at any stage of the proceeding upon mutual consent of the board.

e. The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published. Hearings shall be open to the public.

**32.5(6) *Factors for board consideration.*** The board may consider the following when determining the amount of civil penalty to impose, if any:

- a. Whether the amount imposed will be a substantial economic deterrent to the violation.
- b. The circumstances leading to or resulting in the violation.
- c. The severity of the violation and the risk of harm to the public.
- d. The economic benefits gained by the violator as a result of noncompliance.
- e. The welfare or best interest of the public.

**32.5(7) *Enforcement options.*** In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement.

**32.5(8) *Judicial review.***

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board shall notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

*d.* An action to enforce an order under this rule may be joined with an action for an injunction pursuant to Iowa Code section 105.27(4).

These rules are intended to implement Iowa Code chapters 105 and 272C.